



ACQUISITION,
TECHNOLOGY
AND LOGISTICS

OFFICE OF THE UNDER SECRETARY OF DEFENSE

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WASHINGTON, DC 20301-3000

OCT 4 2002

Marianne Horinko
Assistant Administrator
Office of Solid Waste and Emergency Response (51011)
U.S. Environmental Protection Agency
EPA West Building
1301 Constitution Avenue NW
Washington, DC 20004

Dear Ms. Horinko:

I have been considering our response to your kind letter of 29 July. Much of the difficulty (beyond that associated with my difficult travel schedule) has been that several events have taken place in the meantime that have required reconsideration of the appropriate response to make.

I have felt for some time that the "post-ROD authorities" dispute between EPA and DoD was ill-named, and that the debate under way was a debate between a caricature of our position on the one hand and a caricature of your position on the other. Surely we do not assert that EPA's role at a contamination site governed by CERCLA, in which the remedy chosen involves long-term stewardship to protect the public health from toxic releases, is one of consultation alone.

Our view is much more modest. It is simply that there exists some theoretical limit to the actions the EPA Administrator can require under her authority to select a remedy in the event of disagreement, as provided in CERCLA §120.

Be that as it may, it seems to me that if we define our task as discovering the extent of the theoretical limits I mentioned (if we can agree in the first instance that there are any theoretical limits) and seek to define the difference between the remedy, on the one hand, and its implementation, on the other, we are dooming ourselves to failure. This is true even if we enlist the estimable assistance of the Department of Justice or the Office of Management and Budget, or both.

In direct response to your letter, I think we can agree that EPA's authority extends to such oversight and enforcement as is needed to insure protectiveness of the remedy. Now we can proceed to reach agreement on what oversight and enforcement is in fact needed. Since EPA does not want more than is needed, and DoD does not want more than is needed, we should have little difficulty reaching agreement.

In fact, great progress in this direction has recently been made. EPA Regions 1 and 9 and the Air Force have succeeded in focusing on performance responsibilities in

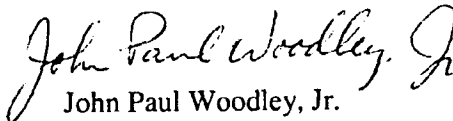


connection with Hanscom and Travis Air Force Base RODs. I expect that more progress will soon be announced in connection with the Langley Air Force Base ROD. This progress on resolving issues based on execution and performance at the ground level is cause for cautious optimism. In the meantime, the fundamental agreement that progress on execution of remedial activities must not pause for resolution of long-term stewardship issues has been most gratifying.

Now that we have put the "post-ROD authorities" issue behind us, we can begin to devote the prodigious talents of our professional staffs, including the enormous capabilities of our legal professionals, to productive use on important matters related to the management of our cleanup programs. These include the Guardian Trust concept, the relation of our program to the brownfields initiative, alignment of EPA GPRA goals and DoD program goals, and many, many others.

One thing of concern to DoD is that the requirements of our program closely mirror those of the EPA program and of private PRP-lead sites. As our approach to long-term stewardship matures, I recommend the development of a rule of general applicability under CERCLA to address these issues globally. We would very much appreciate the opportunity to work with EPA in the development of such a rule, which would go a great way toward satisfying public concerns over the administration of remedies involving long-term stewardship.

Very truly yours,

A handwritten signature in cursive script that reads "John Paul Woodley, Jr." The signature is written in dark ink and is positioned above the printed name.

John Paul Woodley, Jr.
Assistant Deputy Under Secretary of Defense
(Environment)